HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 307(S/S) of 2006

Kunwar Singh
Vs.
State of Uttaranchal & others.

Approved for reporting.

Not approved for reporting

Date of decision 07/03/2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 307 of 2006 (SS)

Kunwar Singh s/o Sri Mohan Singh
Village Siri, P.O. Harsinya Bagar,
District Bageshwar ..... Petitioner

Versus

1. State of Uttaranchal
2. The Chief Engineer, Level-I, Public Works Department, Dehradun
3. The Chief Engineer, Public Works Department Kumaon Region, Almora
4. The Executive Engineer, Construction Division, Public Works Department, Bageshwar

..... Respondents

Sri Ganesh Kandpal, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 7.3.2006

Hon'ble Rajesh Tandon J.

Heard Sri Ganesh Kandpal counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to regularize the services of the petitioner on the post of Beldar and to waive the artificial ceiling limit on the D.A. of the petitioner.

Briefly stated the petitioner was initially appointed as Beldar on daily wages in the Public Works Department in the year 1982 and was taken in work charge establishment from 1.4.1985. In consequent to the Government Order dated 3.1.2003 the Chief Engineer Level-I Uttaranchal, P.W.D.

Dehradun has issued a letter to all the Executive Engineers/ Nodel Officers on 25.1.2003, directing them to regularise all work charge employees working prior to 29.6.1991, if they have been promoted from any cadre in the work charge establishment, their first appointment in the work charge may be considered. The grievances of the petitioner is that the Department has not considered his regularization although he has been working in the workcharge establishment since 1.4.1985. The department has also imposed artificial ceiling on the dearness allowance of the petitioner.

That State of U.P. has issued a G.O. on 15.10.1997 in respect of regularisation of the work charge employees of the department who are working continuously for the last several years. According to G.O. as work-charge employees who have rendered continuous satisfactory service of 5 years or more than 5 years till 31st March 1997 shall be regularized on the post held by them. The relevant clause of the G.O. is mentioned below:

कार्य प्रभारित कर्मियों जिनकी निरन्तर संन्तोषजनक सेवायचें विभाग में दिनांक 31.. 31.3.1997 को पॉच वर्ष या इससे अधिक हो गयी हों एवं अब तक निरन्तर कार्यरत हो तथा जो वर्कचार्ज पर नियुक्त कर प्रतिबन्ध हेतु जारी कार्मिक विभाग के शासनादेश सं0 1085/का–1991 दिनांकित 29.8.1991 के पूर्व से नियुक्त हो को उपलब्ध नियमित पदों/रिक्तियों स्थाई एवं अस्थाई दोनो प्रकृति के पद सम्मिलित हैं की सीमा तक नियमित कार्य प्रभारित अधिष्ठान में रखने हेतु पात्र माना जाय । इस नियमित कार्य प्रभारित कर्मचारियों को राज्य कर्मचारियों की भॉति सभी सुविधायें अनुमन्य हों ।

Uttaranchal Government vide G.O. dated January 3, 2003 has issued directions for regularization of the employees working on work-charged establishment before 29.6.1991. Consequent to that G.O. the Chief Engineer Level-I vide letter dated 25.1.2003 directed all the Executive Engineer, P.W.D. that while regularising the employees of workcharge establishment, their seniority be counted on the date of their appointment in work-charge establishment. The relevant extract of the letter is as follows:

अतः विषयगत प्रकरण पर सम्यक विचारोपरान्त यह निदेष दिये जाते हैं कि ऐसे कार्य प्रभारित कर्मचारी जिसकी कार्य प्रभारित अधिष्ठान में नियुक्ति दिनांक 29.6.91 से पूर्व हुई हो एवं 29.6.91 के पश्चात पदोन्नति/पद परिवर्तन किया गया है को नियमित अतिरिक्त पदों पर नियमित करते समय उनकी ज्येष्ठता का निर्धारण कार्य प्रभारित में आने की प्रथम नियुक्ति की तिथि से लाभ अनुमन्य कराया जाय । साथ ही यह भी निदेष दिये जाते हैं कि कार्यप्रभारित अधिष्ठान में अपने पर उनकी ज्येष्ठता का निर्धारण दैनिक वेतन में नियुक्ति की तिथि से निर्धारण की जाय ।

Thus it is incumbent upon the respondents to comply the order of the Government as well as the Chief Engineer Level-I, Uttaranchal and to regularise the service of the petitioner against the vacant post in the Division concerned.

So far as the imposition of ceiling on the dearness allowance is concerned this Court in several cases has directed the P.W.D. authorities to make payment of salary to the employees of the work-charge establishment after ignoring the ceiling limit. These orders were challenged in Special Appeals. A Division Bench of this Court has held as under in Special Appeal No. 118 of 2004, State of Uttaranchal vs. Mohd. Khan and others on March 4, 2006:

"In view of the logic and concept for payment of dearness allowance as laid down by the Hon'ble Apex Court quoted above, no ceiling limit can be fixed on the dearness allowance

and since the Government has taken a decision to pay the dearness allowance to the work charge employees, then it cannot fix a ceiling limit thereon. Thus, the Government order dated 26.8.1999 fixing the ceiling limit in contrary to the law laid down by the Hon'ble Apex Court which is law of the land under Article 141 of the Constitution of India, cannot be sustained."

In view of the above, a writ of mandamus is issued directing the respondents to pass appropriate order for regularising the service of the petitioner within a month after obtaining the certified copy of this order and also to pay him dearness allowance without imposition any ceiling thereon.

Accordingly, writ petition is allowed. No order as to costs.

Dated: 7.3.2006 **Rajesh Tandon, J.**

*Dyani